IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Crl.Rev.Pet.No. 1031 of 1999()

C.C. NO.221/1990 OF JUDICIAL IST CLASS MAGISTRATE- I, KANJIRAPPALLY.
CRA. NO.230/1993 OF SESSIONS COURT , KOTTAYAM DIVISION.

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REVN. PETITIONER: PW-1.

T.G.SIVASANKARAN NAIR,
S/O. NARAYANAN NAIR, AGED 69,
PATHANAMTHITTA VILLAGE,
KOZHENCHERRY TALUK.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS: APPELLANTS & RESPONDENTS/COMPLAINANT&
---------- ACCUSED.

1. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM.**

2. **RAJASEKHARAN NAIR,@ RAJAN, S/O. KRISHNAN NAIR, APARNNAYIL VEEDU, VAZHAKKALA KARAYIL, ERUMELI VILLAGE.**

3. **LEELAMMA, W/O. KRISHNAN NAIR, OF DO. DO. (AGED 49/90).**

4. **RAJEEV @ RAJI, S/O. VELAYUDHAN NAIR, PUTHAN VEETTIL , OF DO. DO. (AGE 32/90.)**

BY ADV. SRI.V.G.ARUN
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON 06/11/2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

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CRL.R.P.NO. 1031 OF 1999

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DATED THIS THE 6TH NOVEMBER 2007

ORDER

The revision petition is field by the de facto complainant, the father of the deceased lady who allegedly committed suicide on account of the ill-treatment of the husband and others. Accused Nos. 1, 2 and 4 were convicted for the offence under Section 498 A read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year each by the Judicial First Class Magistrate-I, Kanjirappally. But in appeal before the Sessions Judge, they were acquitted. It is submitted that accused No.4 is no more.

2. The prosecution case is that Sushama, wife of accused No.1 committed suicide by pouring kerosene and setting fire on 9-5-1989 at 9.30 p.m. and that she succumbed to the injuries on 12-5-1989. The allegation is that it is on account of the ill-treatment on the part of the accused that she was made to commit suicide. The first accused is the husband, 2nd accused is the mother-in-law, 3rd accused is the father-in-law and 4th accused is the maternal uncle of the first accused, the husband.

3. The evidence adduced in the matter consisted of the testimony of Pws. 1 to 20 and Exts.P1 to P12. The defence got marked Exts.D1 to D3. The trial court relied on the evidence of Pws.1 and 3, the father and mother of the deceased respectively and Pws.2 and 4 to 7, ladies in the neighbourhood of the parental house of the deceased who have testified as to the prosecution version that the deceased used to tell them that the mother-in-law and the maternal uncle of the first accused/her husband used to ill-treat her and that the first accused also displayed hostile attitude towards her. On the other hand, the appellate court found that the evidence of the above witnesses cannot be trusted in view of the fact that in the F.I.S. rendered after the death of the lady which took place after four days of the incident of setting fire did not contain any positive averments as to the ill-treatment by the accused and also that the dying declaration of the deceased totally absolved the accused of the ill-treatment alleged. It was also noted that the independent witnesses examined are all persons residing in the vicinity of parental house of the deceased.

4. According to the revision petitioner/PW1, the appellate court faulted in reversing the findings of the trial court and the order is liable to be revised.

5. PW1, the father of the deceased who rendered the F.I.S., i.e. Ext.P1 on 13-5-1989 at 8.30 a.m. has testified as to the intimation received with respect to the alleged incident on 9-5-1989 in the afternoon and that on 12-5-1989 at 7.40 p.m. Sushama, her daughter died due to burns. It is deposed by him that she requested him and his son Sunil not to go out and that henchmen of the 4th accused were standing outside and that she spoke only after ascertaining that no one from Erumeli, the place of her matrimonial home, is near the bed and she told that if she revealed anything her father and brother will be done away with. According to him, his daughter and son-in-law used to come to his house on every 10 days on motor bike or along with the 3rd accused, father-in-law. According to him she used to complain to her mother that the 4th accused, the maternal uncle of A1 used to make advances towards her and on one day when herself and the 2nd accused, mother in law, were watching television, 4th accused uncle lifted her sari and enquired whether her anklets are made of gold. On one day, A4 caught on her hands. According to him, she had told her mother that A2, the mother in law used to facilitate the advances by the 4th accused. When she complained to the first accused, the husband, he created a tantrum by throwing away utensils and books from the table. She had also told her mother that

on one of the days when she was travelling on the pillion, A1, the husband had told that even if she is kicked out of the motor bike and is killed, nobody is to question him.

6. The deceased was married to the first accused as per customary rites on 4-12-1988 and the incident took place within one year of marriage. The first accused is working as a Lecturer in Sree Kerala Varma College, Thrissur. It was brought out in the cross examination of PW1 that he has not mentioned about any ill-treatment by the in-laws of the husband in the F.I.S. rendered by him, although the same was rendered after 10 hours of the death of his daughter. He has admitted that he might have stated to the police that there was no quarrel between the deceased and the family members of her husband. But he has deposed that three days prior to the date of occurrence there was quarrel and cries emanated from the house of the first accused and that on 8-5-1989 in the night 4th accused, uncle and his son came to the house and abused the deceased calling kuyil and alleged that she was unchaste and the 2nd accused slapped the deceased, 4th accused kicked her and she fell down unconscious and the accused smeared kerosene and set fire. When the deceased opened her eyes due to the heat, the accused were seen removing her ornaments. There was no ornaments on her body when she was

in the hospital. There is no explanation as to why the above details were not mentioned in the F.I.S. It is his version that PW2, the mother of the deceased had questioned A2 regarding the ill-treatment. According to him, the police have not conducted proper investigation and he had moved this Court for investigation by the C.B.I. It is C.B.C.I.D.that conducted the investigation.

6. PW3, the mother of the deceased have also supported the version of PW1. She has also repeated the version of PW1 as to the pouring of kerosene and setting fire. According to her, the deceased used to come to the parental house on every fortnight. The first accused used to be at home only at the weekends. According to her, the 2nd accused, mother-in-law used to go to the house of 4th accused after taking breakfast in the morning and used to return only after about 2/3 hours. The two houses are situated about 100 metres away. It is one of such occasion that A4, the uncle used to come to the house and made advances to her. She has also stated in the same manner as PW1 as to the advances made by the 4th accused that he lifted her sari, caught hold of her hand etc. and also threw some sand through the window when she was sleeping in the cot inside the room. According to PW3, she had asked about the advances made by the 4th accused to the 2nd accused and the 2nd accused had

assured that such incidents will not recur. It is her version that the first accused is having another uncle and that the above uncle is having a daughter and the first accused had the intention to marry that daughter. According to her, 2nd and 3rd accused had told the deceased that as she has studied only upto pre-degree and that she is not a suitable wife to the first accused. According to her, she questioned the first accused about the threat by him that even if he pulls her down form the motor bike nothing will happen. She has also testified in the same terms as PW1 as to the rest of the allegations and the attitude of the first accused.

7. The version of Pws. 2 and 4 to 7, ladies in the neighbourhood of the parental house is that there was complaints of ill-treatment and the deceased used to tell them that the mother-in-law is a terrible woman and the uncle used to make advances and that the first accused made no heed to her complaints. PW4 has also stated that the deceased used to complain that she was not given food. PW4 has also stated that the deceased told her that the 2nd and 3rd accused, the in-laws are demanding dowry of Rs.5 lakhs and that only after giving that amount she will go to the matrimonial home. It was brought out in the cross examination of Pws.3, 4, 5 and 7 that many of the statements made by them before the court is not mentioned

when the police questioned them and recorded under Section 161 Cr.P.C. Pw7 has also stated that the deceased has stated that the in-laws are not giving her proper food and that the sweets given to her from her house were given to the 4th accused. Evidently the version of Pws.1 and 3, the parents of the deceased and the rest of the witnesses in this regard contains discrepancies. Pws.1 and 3 have no allegation that the in-laws demanded dowry or that she was not given proper food etc. and also it was brought out that some of the allegations mentioned by the witnesses, i.e.PWs.2 and 4 to 7 are not contained in their previous statements. It was the above circumstances that rendered the version of the above witnesses rather untrustworthy. Moreover, the dying declaration recorded by PW.18, Judicial First Class Magistrate, Ettumanoor on 12-5-1989 on which day she died did not contain any allegations against the in-laws or the husband. What has been stated by her in the dying declaration is that some people alleged that she is immoral. She has clarified that none of the relatives had made the above allegation and it is on account of the above allegation that she poured kerosene and set fire. It is also mentioned that her husband is not at all involved. It is pertinent to note that there is no specific allegation of ill-treatment as such by the husband or the in-laws except the version of Pws.1 and 3,

parents that on the day of the occurrence the deceased was slapped, kicked and set fire but there is no explanation as to why the same did not find a place in Ext.P1 F.I.S. It is to be noted that the only version in Ext.P1 is that his daughter died because the people in the house of the husband has done something to cause her mental pain. But he has also stated that he has no case that he is not aware that the son-in-law and his persons in the matrimonial home made any quarrel with the deceased.

8. As already noted A3, the father-in-law was acquitted by the trial court itself. The 4th accused uncle is the person against whom the allegations are made that he made advances towards the deceased and he used to call her kuyil. During the pendency of the proceedings herein, 4th accused died . The allegation against A2, the mother-in-law is that she has facilitated A4 to make advances towards the deceased. It is the allegation that the 2nd accused used to leave the house and go to the house of 4th accused and returned after a few hours and during the time, 4th accused used to come to the house and make advances towards the deceased. The only allegation against the husband is that when she complained about the attitudes of the 4th accused, the first accused threw books and utensils and that he once mentioned that even if she thrown out of the motor bike,

none would question him and that he had an intention to marry to his uncle's daughter. It is also to be noted that there is no case of any specific incident or torture or ill-treatment on the part of the first and the second accused. At best the evidence would indicate that the deceased was over sensitive and that she might have committed suicide. The incidents alleged by Pws.1 and 3, the parents that on the fateful day their daughter was beaten up, kicked and poured kerosene on the body and set fire and the ornaments were removed while she was lying with the burns cannot be believed at all as it is unlikely that had such an incident happened the allegations would not have found a place in Ext.P1 F.I.S. which was recorded after 10 hours of the death which took place on the 3rd day of the incident. It has also to be noted that the matter is in revision over the order of acquittal and the confines of this Court exercising such a jurisdiction is much restricted. (**Thankappan Nadar v. Gopala Krishnan, (2002)9 S.C.C.393**).

In the circumstances, I find no reason to disturb the findings of the Sessions Judge acquitting the accused . The revision petition is dismissed.

ks. **K.R.UDAYABHANU, JUDGE**

K.R.UDAYABHANU, J

CRL.R.P. NO. 1031 of 1999

ORDER

6-11-2007

K.R. UDAYABHANU, J.

CRL.A.NO. OF

DATED THIS THE th June 2007

ORDER

K.R.UDAYABHANU, JUDGE

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